

2003

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Education, Youth and Family Services)

# Tertiary Accreditation and Registration Bill 2003

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(As presented)

(Minister for Education, Youth and Family Services)

## **Tertiary Accreditation and Registration Bill 2003**

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### **A Bill for**

An Act about tertiary accreditation and registration, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Tertiary Accreditation and Registration Act 2003*.

4 **2 Commencement**

5 This Act commences on 1 July 2003.

6 *Note* The naming and commencement provisions automatically commence on  
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Purpose**

9 The purpose of this Act is to establish an accreditation and  
10 registration framework for vocational education and training and  
11 higher education, in particular by applying nationally agreed  
12 protocols and standards.

13 **4 Dictionary**

14 The dictionary at the end of this Act is part of this Act.

15 *Note 1* The dictionary at the end of this Act defines certain words and  
16 expressions used in this Act.

17 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
18 the entire Act unless the definition, or another provision of the Act,  
19 provides otherwise or the contrary intention otherwise appears (see  
20 Legislation Act, s 155 and s 156 (1)).

21 **5 Notes**

22 A note included in this Act is explanatory and is not part of this Act.

23 *Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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1   **6   Offences against Act—application of Criminal Code etc**

2       Other legislation applies in relation to offences against this Act.

3       *Note 1   Criminal Code*

4               The Criminal Code, ch 2 applies to all offences against this Act (see  
5               Code, pt 2.1).

6               The chapter sets out the general principles of criminal responsibility  
7               (including burdens of proof and general defences), and defines terms  
8               used for offences to which the Code applies (eg *conduct*, *intention*,  
9               *recklessness* and *strict liability*).

10       *Note 2   Penalty units*

11               The Legislation Act, s 133 deals with the meaning of offence penalties  
12               that are expressed in penalty units.

1 **Chapter 2**                    **Accreditation and**  
2    **registration council**

3 **Part 2.1**                    **Establishment, functions and**  
4    **membership of council**

5 **7**                    **Establishment of council**

6                    The Accreditation and Registration Council (the *council*) is  
7                    established.

8 **8**                    **Functions of council**

9                    (1) The council has the following functions:

10                    (a) to advise the Minister about—

11                                    (i) accreditation of vocational education and training courses  
12                                    and higher education courses; and

13                                    (ii) the registration of vocational education and training  
14                                    organisations and higher education providers; and

15                                    (iii) improving the quality of vocational education and  
16                                    training and higher education;

17                    (b) to accredit vocational education and training courses and  
18                    higher education courses;

19                    (c) to register vocational education and training organisations and  
20                    higher education providers;

21                    (d) in association with the vocational education and training  
22                    authority, to facilitate recognition and quality assurance in the  
23                    provision of vocational education and training;

- 1 (e) to promote consistent national standards for—  
2 (i) registration of vocational education and training  
3 organisations and higher education providers; and  
4 (ii) accreditation of vocational education and training courses  
5 and higher education courses; and  
6 (iii) the issue of qualifications and higher education awards;  
7 (f) to inquire into, and advise the Minister on, issues about  
8 vocational education and training and higher education.  
9 (2) The council may exercise any other function given to it under this  
10 Act or another Territory law.  
11 *Note* A provision of a law that gives an entity (including a person) a function  
12 also gives the entity powers necessary and convenient to exercise the  
13 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

## 14 **9 Ministerial directions to council**

- 15 (1) The Minister may, in writing, give the council a direction in relation  
16 to the exercise of its functions, but not about advising the Minister  
17 or reporting under the *Annual Reports (Government Agencies) Act*  
18 *1995*, section 8.  
19 (2) The council must comply with a direction under this section.  
20 (3) A direction under this section is a notifiable instrument.  
21 *Note* A notifiable instrument must be notified under the Legislation Act.

## 22 **10 Delegation by council**

- 23 The council may delegate the exercise of its functions to—  
24 (a) a council member; or  
25 (b) a committee of the council; or  
26 (c) a council staff member; or

1 (d) a person or committee prescribed under the regulations.

2 *Note 1* For the making of delegations and the exercise of delegated functions,  
3 see Legislation Act, pt 19.4.

4 *Note 2* If a law authorises or requires a body to exercise a function, it may do  
5 so by resolution, see Legislation Act, s 199.

## 6 **11 Council to have regard to authority's views**

7 In exercising its functions, the council must have regard to the views  
8 of the authority about vocational education and training.

## 9 **12 Membership of council**

10 (1) The council consists of the following members:

11 (a) a chairperson;

12 (b) 4 people with expertise in vocational education and training;

13 (c) 2 people with expertise in higher education;

14 (d) 1 person appointed, after consultation with employer  
15 organisations, to represent the interests of employers;

16 (e) 1 person appointed, after consultation with the trades and  
17 labour council, to represent the interests of employees;

18 (f) 1 person who, in the Minister's opinion, represents the interests  
19 of providers of industry training advisory services;

20 (g) 1 person nominated by the authority to represent the interests  
21 of the authority;

22 (2) A member of the authority may be a member of the council.

1 (3) The Minister must appoint the council members.

2 *Note 1* For the making of appointments generally, see Legislation Act,  
3 div 19.3.

4 *Note 2* Certain statutory appointments made by a Minister require consultation  
5 with a Legislative Assembly committee and are disallowable (see  
6 Legislation Act, div 19.3.3).

7 *Note 3* A power to appoint a person to a position includes power to appoint a  
8 person to act in the position (see Legislation Act, s 209).

### 9 **13 Ending appointment of council member**

10 (1) The Minister must end the appointment of a council member if the  
11 Minister becomes aware that the member—

12 (a) has failed to comply with section 14 (Disclosure of interests by  
13 council members) without reasonable excuse; or

14 (b) has at any time been convicted, in Australia or elsewhere, of an  
15 offence punishable by imprisonment for at least 1 year.

16 (2) The Minister may end the appointment of a council member—

17 (a) if the member is absent from 3 consecutive meetings of the  
18 council other than on leave approved by the Minister; or

19 (b) for members mentioned in section 12 (1) (d) to (g)—if the  
20 Minister is satisfied that the member is no longer an  
21 appropriate person to represent the relevant interests; or

22 (c) for misbehaviour or physical or mental incapacity, if the  
23 incapacity affects the exercise of the member's functions; or

24 (d) if the member becomes bankrupt, applies to take the benefit of  
25 any law for the relief of bankrupt or insolvent debtors,  
26 compounds with creditors or makes an assignment of  
27 remuneration for the benefit of creditors.

28 *Note* A person's appointment also ends if the person resigns (see Legislation  
29 Act, s 210).

1   **14   Disclosure of interests by council members**

2       (1) A council member who has a relevant interest in an issue being  
3       considered, or about to be considered by the council must, as soon  
4       as practicable after the relevant facts have come to the council  
5       member's knowledge, disclose the nature of the interest at a meeting  
6       of the council.

7       (2) The disclosure must be recorded in the council's minutes and, unless  
8       the council otherwise decides, the council member must not—

9           (a) be present when the council considers the issue; or

10          (b) take part in a decision of the council on the issue.

11       (3) Any other council member who also has a relevant interest in the  
12       issue must not—

13           (a) be present while the council is considering whether to make a  
14           decision under subsection (2); or

15           (b) take part in the decision.

16       (4) In this section:

17           *relevant interest*, in an issue, means a direct or indirect financial  
18           interest in the issue.

19   **15   Reporting of disclosed interests to Minister**

20       (1) Within 14 days after the day the disclosure of an interest under  
21       section 14 (1) is made, the council chairperson must report to the  
22       Minister in writing about—

23           (a) the disclosure; and

24           (b) the nature of the interest disclosed; and

25           (c) any decision by the council under section 14 (2).



- 1 (2) The council chairperson must give to the Minister, by 31 July in  
2 each year, a statement that sets out the information given to the  
3 Minister in reports under subsection (1) that relate to disclosures  
4 made during the previous financial year.
- 5 (3) The Minister must give a copy of the statement to the relevant  
6 committee of the Legislative Assembly within 14 days after the day  
7 the Minister receives the statement.
- 8 (4) In this section:
- 9 *relevant committee* means—
- 10 (a) the standing committee of the Legislative Assembly nominated  
11 by the Speaker for subsection (3); or
- 12 (b) if no nomination under paragraph (a) is in effect—the standing  
13 committee of the Legislative Assembly responsible for public  
14 accounts.

15 **16 Reimbursement for council members**

16 The Territory must reimburse a council member for expenses  
17 reasonably incurred in the exercise of the member's functions.

18 **17 Council staff**

- 19 (1) The council may make arrangements with the chief executive to use  
20 public servants in the administrative unit under the chief executive's  
21 control.
- 22 (2) The *Public Sector Management Act 1994* applies to the management  
23 by the council of public servants the subject of an arrangement  
24 under subsection (1).

1    **18    Annual report by council**

2            A report prepared by the council for the *Annual Reports*  
3            (*Government Agencies*) Act 1995, section 8 must include, for the  
4            reporting period, details of any direction under section 9 (Ministerial  
5            directions to council) given during the period and the way the  
6            direction was given effect.

1 **Part 2.2** **Proceedings of council**

2 **19 Calling council meetings**

3 (1) The council meets at the times and places the council chairperson  
4 decides.

5 (2) The council chairperson must ensure that council members have  
6 reasonable notice of meetings.

7 **20 Council procedures**

8 (1) The council chairperson presides at meetings of the council.

9 (2) However, if the chairperson is absent from a meeting, the members  
10 present may elect a member to preside at the meeting.

11 (3) Business may be carried on at a council meeting only if at least  
12 5 council members are present, including—

13 (a) the member mentioned in section 12 (1) (d); and

14 (b) the member mentioned in section 12 (1) (e).

15 (4) A question arising at a meeting may be decided by a majority of the  
16 votes of members present and voting.

17 (5) If the votes of the council on a question are equally divided, the  
18 decision of the member presiding is the decision of the council on  
19 the question.

20 (6) The council may decide its own procedure in relation to anything for  
21 which a procedure is not provided under this Act.

22 (7) The council must keep minutes of its meetings.

## 1 **Part 2.3** **Council committees**

### 2 **21 Establishment of committees**

3 The council may establish committees to help the council in the  
4 exercise of its functions.

### 5 **22 Exercise of committee functions**

6 (1) The council may decide—

7 (a) how a committee is to exercise its functions; and

8 (b) the procedure to be followed for meetings of the committee,  
9 including—

10 (i) the calling of meetings; and

11 (ii) the number of committee members to be present at  
12 meetings (including requirements that particular members  
13 be present); and

14 (iii) the committee member who is to preside at meetings; and

15 (iv) how questions arising at a meeting are to be decided; and

16 (v) the keeping of minutes of meetings.

17 (2) Subject to any decision of the council under subsection (1), a  
18 committee may decide its own procedures.

### 19 **23 Membership of committees**

20 (1) A committee consists of the people appointed by the council.

21 *Note 1* For the making of appointments (including acting appointments), see  
22 Legislation Act, div 19.3.

23 *Note 2* In particular, a person may be appointed for a particular provision of a  
24 law (see Legislation Act, s 7 (3)) and an appointment may be made by  
25 naming a person or nominating the occupant of a position (see s 207).

1       (2) A committee may consist completely or partly of council members.

2       **24 Reimbursement for committee members**

3       (1) A committee member is not entitled to be paid for the exercise of  
4       the member's functions.

5       (2) However, the Territory must reimburse a committee member for  
6       expenses reasonably incurred in the exercise of the member's  
7       functions.

8       (3) This section does not apply to a committee member who is also a  
9       council member.

## 1           **Part 2.4                           Compliance audits**

### 2           **25     Audit of training organisations and higher education** 3           **providers**

4           The council may at any time conduct a compliance audit of—

- 5           (a) a training organisation or higher education provider registered  
6                 by the council, or that has applied to the council for  
7                 registration; or
- 8           (b) any of the operations of the organisation or provider in the  
9                 ACT or elsewhere.

10          *Note*     For visits to premises, see pt 6.1.

### 11          **26     Audit of RTO registered by another registering body**

12          (1) This section applies in relation to—

- 13           (a) an RTO registered by a registering body other than the council  
14                 (the *other registering body*); and
- 15           (b) any of the RTO's operations in the ACT.

16          (2) The council may conduct a compliance audit of the RTO if—

- 17           (a) the council—
- 18                 (i) suspects on reasonable grounds that the RTO has  
19                 contravened the RTO standards; and
- 20                 (ii) has advised the other registering body of the suspected  
21                 contravention; and
- 22           (b) the other registering body—
- 23                 (i) within 30 days after the day it receives the advice, fails to  
24                 take steps to deal with the suspected contravention to the  
25                 satisfaction of the council; or

- 1                   (ii) at any time advises the council that it does not propose to  
2                   take any step or further step to deal with the suspected  
3                   contravention.

4   **27   Conduct of audit**

- 5   (1) The council must conduct a compliance audit of a training  
6   organisation or higher education provider using the relevant RTO  
7   standards and higher education standards.
- 8   (2) A failure to comply with subsection (1) is of no effect if the  
9   failure—
- 10       (a) does not substantially affect the outcome of the audit; or
- 11       (b) arises out of inconsistency between the standards mentioned in  
12       subsection (1) and the legislation of the particular jurisdiction  
13       in relation to which the failure arises.

14   **28   Powers not limited by compliance audit provisions**

15   This part does not limit the power of the council or any other  
16   registering body to inquire into the activities of a training  
17   organisation or higher education provider.

1 **Chapter 3 Vocational education and**  
2 **training**

3 **Part 3.1 Preliminary**

4 **29 Application of ch 3**

5 This chapter applies to the provision of vocational education and  
6 training and assessments for qualifications and statements of  
7 attainment.



1 **Part 3.2** **National register**

2 **30 Registration and national effect of registration**

3 For this chapter, a person or matter is registered if details of the  
4 person or matter are recorded on the national register—

5 (a) for this chapter—by the council; or

6 (b) for a corresponding law—by another registering body, or by a  
7 body equivalent to the council in another jurisdiction that is  
8 responsible for the administration of the accreditation of  
9 courses of vocational education (however described) under the  
10 corresponding law; or

11 (c) for this chapter or a corresponding law—by ANTA or another  
12 entity.

1 **Part 3.3** **Registered training**  
2 **organisations**

3 **31 Scope of registration of RTO**

4 For this Act, an RTO's *scope of registration* consists of the  
5 qualifications, statements of attainment or units of competency for  
6 which the RTO is registered to provide training or assessments.

7 **32 Applying in the ACT for registration as RTO**

- 8 (1) A person may apply to the council for registration as a training  
9 organisation.

10 *Note* If a form is approved under s 112 (Approved forms) for an application,  
11 the form must be used.

- 12 (2) The applicant must give the council any information required by it  
13 to decide the application.

14 **33 Decision about registration as RTO**

- 15 (1) On an application for registration, the council must register the  
16 applicant as a training organisation, or refuse to do so.

- 17 (2) In deciding the application, the council must apply the RTO  
18 standards.

- 19 (3) The council may register the applicant only if—

20 (a) on registration under the application, the applicant will not  
21 otherwise be registered as a training organisation by any other  
22 registering body; and

23 (b) the council considers that the applicant's main place of  
24 business is, or all or most of its operations will be conducted,  
25 in the ACT; and

1 (c) a compliance audit has been conducted of the applicant that  
2 shows that the applicant complies with the RTO standards  
3 (other than the legislative compliance standard).

4 *Note* Section 27 (Conduct of audit) prescribes a requirement for an audit  
5 mentioned in s (3) (c).

6 (4) Subsection (3) (c) does not apply to an application, if—

7 (a) the application is made by an RTO registered by another  
8 registering body; and

9 (b) the council is satisfied that there are no outstanding audit  
10 compliance failures for the RTO; and

11 (c) the RTO has received a notice from the other registering body  
12 under a corresponding law for section 39 (Cancelling RTO  
13 registration on change of location of operations); and

14 (d) the applicant does not seek an amendment of the RTO's  
15 existing scope or conditions of registration.

16 (5) Subsections (2) and (3) do not limit the grounds on which the  
17 council may decide not to register an applicant.

18 (6) The council may impose conditions on the registration of the  
19 applicant as a training organisation.

20 **Example**

21 a condition that the RTO delivers a nationally recognised course

22 *Note* An example is part of the Act, is not exhaustive and may extend, but  
23 does not limit, the meaning of the provision in which it appears (see  
24 Legislation Act, s 126 and s 132).

25 (7) A condition imposed under subsection (6)—

26 (a) must apply in every jurisdiction, that is, it may not be limited  
27 in effect to a particular place or jurisdiction, unless the contrary  
28 intention appears; and

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- 1 (b) must be consistent with this chapter and the RTO standards.
- 2 *Note* For conditions to which an RTO is subject under this chapter, see s 35  
3 (Registration conditions—RTO).
- 4 (8) If the council decides to register an applicant, it must—
- 5 (a) register the applicant as a training organisation; and
- 6 (b) register details of the applicant’s scope of registration.
- 7 (9) The council must comply with subsection (8)—
- 8 (a) immediately after approving the application; or
- 9 (b) if the application is made in conjunction with an application for  
10 the cancellation of a training organisation’s registration under a  
11 corresponding law for section 39 (Cancelling RTO registration  
12 on change of location of operations)—immediately after the  
13 cancellation under the corresponding law is registered by the  
14 other registering body.

15 **34 Decision about registration—registration as RTO**  
16 **previously cancelled**

- 17 (1) Despite section 33, the council must refuse to register an applicant  
18 as a training organisation if—
- 19 (a) the applicant, or an associate of the applicant, has previously  
20 been registered as a training organisation; and
- 21 (b) the registration of the training organisation was cancelled  
22 (other than on the application of the training organisation) less  
23 than 12 months before the day the application for registration is  
24 made.
- 25 (2) In this section:
- 26 *associate*—a person is an *associate* of someone else in relation to a  
27 training organisation if the person can, or will be able to, have a  
28 significant influence over, or in relation to, the carrying out of the  
29 operations of the training organisation.

- 1 **35 Registration conditions—RTO**
- 2 (1) Registration of an RTO under section 33 (Decision about  
3 registration as RTO) is subject to—
- 4 (a) conditions imposed under subsection (2) ; and
- 5 (b) conditions imposed—
- 6 (i) under section 33 (6) or 38 (2) (Amending, suspending or  
7 cancelling registration without application); or
- 8 (ii) by another registering body under a corresponding law  
9 for section 38 (2) (a).
- 10 (2) The following conditions of registration are imposed on an RTO  
11 registered under section 33 (Decision about registration as RTO):
- 12 (a) the RTO must comply with requirements stated to apply to an  
13 RTO under the RTO standards;
- 14 (b) the RTO must, as far as practicable, give notice to the council  
15 of proposals for the following matters before they happen:
- 16 (i) any substantial change to the RTO’s control,  
17 management or operations;
- 18 (ii) any matter that the RTO must give notice of to the  
19 council under the RTO standards;
- 20 (c) the RTO must give notice to the council of a matter mentioned  
21 in paragraph (b) immediately after it happens;
- 22 (d) the RTO—
- 23 (i) must submit to any compliance audit conducted by the  
24 council; and
- 25 (ii) if a compliance audit shows that the RTO does not  
26 comply with the RTO standards (other than any  
27 legislative compliance standard)—must take all necessary  
28 steps to comply;

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- 1 (e) the RTO must submit to any compliance audit conducted by  
2 another registering body under a corresponding law for  
3 section 26 (Audit of RTO registered by another registering  
4 body);
- 5 *Note* Section 27 (Conduct of audit) prescribes a requirement for a  
6 compliance audit mentioned in s (2) (c) and (d).
- 7 (f) the RTO must not contravene a provision of this Act or a  
8 corresponding law;
- 9 (g) the RTO must give to the council any information about any of  
10 its operations required by the council;
- 11 (h) the RTO must give to the council any information required by  
12 the council about a condition of registration imposed under  
13 section 38 (Amending, suspending or cancelling RTO  
14 registration without application);
- 15 (i) the RTO must give to another registering body any information  
16 required by the other registering body about a condition of  
17 registration imposed by the registering body under a  
18 corresponding law for section 38 (2) (a).
- 19 (3) A condition to which an RTO is subject under this section applies to  
20 the operations of the RTO in every jurisdiction, unless the contrary  
21 intention appears.
- 22 (4) An RTO must not contravene a condition of its registration.
- 23 *Note* For effect of noncompliance with a condition, see s 38 (2).
- 24 (5) A condition to which an RTO registered by another registering body  
25 is expressed to be subject in the Territory under a corresponding law  
26 has effect for the Territory.

27 **36 Period of registration—RTO**

28 The registration of an RTO may be for a period of up to 5 years, and  
29 may be renewed if application for renewal is made at least 6 months  
30 before the day the registration ends.

1 **37 Amending registration on application by RTO**

2 (1) On application by an RTO that was registered by it, the council must  
3 amend the RTO's registered details, or refuse to do so.

4 *Note* If a form is approved under s 112 (Approved forms) for an application,  
5 the form must be used.

6 (2) If the application is to amend the RTO's scope or conditions of  
7 registration, the RTO must give the council any information  
8 required by it to decide the application.

9 (3) For an application mentioned in subsection (2), section 33 (Decision  
10 about registration as RTO) applies as if it were an application under  
11 that section, subject to the following:

12 (a) section 33 (3) (a) is not relevant;

13 (b) section 33 (3) (b) applies in relation to the scope or conditions  
14 of registration, as amended in accordance with the application;

15 (c) section 33 (3) (c) only requires a compliance audit to the extent  
16 that an audit is relevant to the amendment.

17 (4) On application by an RTO for the cancellation of registration, other  
18 than an application to which section 39 (1) (Cancelling RTO  
19 registration on change of location of operations) applies, the council  
20 must cancel the registration of the RTO.

21 **38 Amending, suspending or cancelling RTO registration**  
22 **without application**

23 (1) An object of this section is to ensure that, of all registering bodies,  
24 the registering body that registers an RTO has the primary  
25 responsibility to take action against the RTO if a ground mentioned  
26 in subsection (3) arises.

27 (2) On 1 or more of the grounds mentioned in subsection (3), the  
28 council may on its own initiative—

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- 1 (a) amend the scope or conditions of registration of an RTO that  
2 was registered by another registering body, but only to impose  
3 a restriction applying in the ACT; or
- 4 (b) amend the scope or conditions of registration of an RTO that  
5 was registered by it, including by imposing a restriction  
6 applying in the ACT or another jurisdiction; or
- 7 (c) suspend the registration, or part of the scope of registration, of  
8 an RTO that was registered by it, by imposing a prohibition  
9 applying in the ACT or another jurisdiction while the  
10 suspension is in force; or
- 11 (d) cancel the registration of an RTO that was registered by it.
- 12 (3) The grounds are as follows:
- 13 (a) the registration, or the part of the scope of registration, was  
14 obtained because of incorrect or misleading information;
- 15 (b) the RTO has contravened a condition of registration.
- 16 (4) The council must not impose a restriction under subsection (2) (a)  
17 unless the registering body that registered the RTO—
- 18 (a) fails to take any step to deal with the matter to which the  
19 grounds relate within 30 days after the day the matter comes to  
20 its attention; or
- 21 (b) fails, after taking any step to deal with the matter to which the  
22 grounds relate, to take another step within 30 days.
- 23 (5) Subsection (4) does not apply if the council is relying on a ground  
24 established by a compliance audit.
- 25 (6) Also, subsection (4) does not stop the council, before the end of a  
26 30-day period mentioned in the subsection, taking all steps  
27 necessary to impose a restriction immediately after, or at any time  
28 after, the period has ended.



- 1 (7) If a restriction or prohibition imposed under subsection (2) (a), (b)  
2 or (c) relates to a particular place or jurisdiction, it may only be  
3 imposed because of a particular fact situation that has arisen in the  
4 place or jurisdiction.
- 5 (8) Also, a restriction or prohibition imposed under subsection (2) (a),  
6 (b) or (c) must be consistent with this chapter and the RTO  
7 standards.
- 8 (9) Before cancelling the registration of an RTO under  
9 subsection (2) (d), the council must consult the registering bodies of  
10 each other jurisdiction where the RTO is operating.
- 11 (10) Failure to comply with subsection (9) does not affect a cancellation  
12 of the registration of an RTO.

13 **39 Cancelling RTO registration on change of location of**  
14 **operations**

- 15 (1) On the grounds that an RTO does not have its main place of  
16 business, and does not conduct all or most of its operations, in the  
17 ACT, the council may cancel the RTO's registration—
- 18 (a) on application by the RTO; or  
19 (b) on its own initiative.
- 20 (2) The council must give notice to the RTO at least 30 days before  
21 cancelling the registration.
- 22 (3) If, before the end of the period mentioned in subsection (2), the  
23 RTO makes an application to another registering body for  
24 registration as a training organisation (the *transfer application*), the  
25 council must not cancel the registration of the RTO until the transfer  
26 application is decided.
- 27 (4) Subsection (3) does not apply if the council is satisfied that the RTO  
28 is not acting honestly in relation to the transfer application.

1    **40    Effect of suspending RTO registration**

2       (1) This section applies if a prohibition is imposed on an RTO under  
3       section 38 (2) (c) (Amending, suspending or cancelling RTO  
4       registration without application).

5       (2) Subject to section 41 (3) (Suspension of registration—training or  
6       assessment previously agreed), a person must not do anything for  
7       any of the following purposes in relation to training or an  
8       assessment that is the subject of the prohibition:

9           (a) recruitment or enrolment;

10          (b) soliciting or accepting any consideration for recruitment or  
11          enrolment;

12          (c) starting or providing the training or assessment;

13          (d) issuing any qualification or statement of attainment in relation  
14          to the training or assessment, unless the training or assessment  
15          was completed before the prohibition.

16          Maximum penalty: 50 penalty units.

17       (3) An offence against this section is a strict liability offence.

18    **41    Suspension of registration—training or assessment**  
19    **previously agreed**

20       (1) This section applies to an RTO if—

21          (a) a prohibition is imposed on the RTO under section 38 (2) (c)  
22          (Amending, suspending or cancelling RTO registration without  
23          application); and

24          (b) before the prohibition took effect, the RTO entered into an  
25          agreement to provide training or an assessment to a person that  
26          the RTO would be prohibited from providing if it were not for  
27          this section; and

- 1 (c) the council approves the training or assessment under  
2 subsection (2).
- 3 (2) On application by the RTO, the council may approve the provision  
4 of training or assessment under the agreement for a period ending no  
5 later than 12 months after the prohibition started, unless the council  
6 considers that there are circumstances justifying the refusal of the  
7 application.
- 8 **Example of circumstance**  
9 danger of injury to anyone's health or safety
- 10 *Note* An example is part of the Act, is not exhaustive and may extend, but  
11 does not limit, the meaning of the provision in which it appears (see  
12 Legislation Act, s 126 and s 132).
- 13 (3) The prohibition is taken not to have effect during the period stated  
14 in the approval for the purposes only of enabling the RTO to—
- 15 (a) provide the training or assessment; or  
16 (b) issue a qualification or statement of attainment in relation to  
17 the training or assessment.
- 18 (4) Section 40 (2) does not apply in relation to the training or  
19 assessment, subject to subsection (6).
- 20 (5) The council may, in exceptional circumstances, direct the RTO to  
21 immediately stop conducting the operations mentioned in  
22 subsection (3).
- 23 **Example of exceptional circumstance**  
24 danger of injury to anyone's health or safety
- 25 (6) If the council gives a direction to the RTO under subsection (5)—
- 26 (a) the effect of the prohibition is taken to start again from the day  
27 after the day the direction is given; and  
28 (b) in particular, section 40 (2) applies in relation to the training  
29 and assessment.

1 **42 Cancellation of registration—training or assessment**  
2 **previously agreed**

- 3 (1) This section applies to an RTO if—  
4 (a) the council cancels its registration; and  
5 (b) before the cancellation took effect, the RTO entered into an  
6 agreement to provide training or an assessment to a person; and  
7 (c) the council approves the training or assessment under  
8 subsection (2).  
9 (2) On application by the RTO, the council may approve the provision  
10 of training or assessment under the agreement for a period ending no  
11 later than 12 months after the cancellation, unless the council  
12 considers that there are circumstances justifying the refusal of the  
13 application.

14 **Example of circumstance**

15 danger of injury to anyone's health or safety

16 *Note* An example is part of the Act, is not exhaustive and may extend, but  
17 does not limit, the meaning of the provision in which it appears (see  
18 Legislation Act, s 126 and s 132).

- 19 (3) The registration of the RTO is taken to continue during the period  
20 stated in the approval for the purposes only of enabling the RTO  
21 to—  
22 (a) provide the training or assessment; or  
23 (b) issue any qualification or statement of attainment in relation to  
24 the training or assessment.  
25 (4) The council may, in exceptional circumstances, direct the RTO to  
26 immediately stop conducting the operations mentioned in  
27 subsection (3).

28 **Example of exceptional circumstance**

29 danger of injury to anyone's health or safety

- 1 (5) If the council gives a direction to the RTO under subsection (4) the  
2 RTO's registration is taken to be cancelled for all purposes from the  
3 day after the day the direction is given.

4 **43 Registration of amendment, end of registration etc.**

5 If the registration of an RTO is amended or the registration ends  
6 (whether by expiry or cancellation), the council must amend the  
7 national register as follows:

- 8 (a) for an amendment of the scope or details of registration, other  
9 than an amendment of the conditions of registration—record  
10 details of the amendment;
- 11 (b) for the end of registration—remove the registered details of the  
12 RTO.

13 **44 Offence to falsely claim to be RTO etc**

- 14 (1) A person who is not an RTO commits an offence if the person  
15 claims to be an RTO.

16 Maximum penalty: 50 penalty units.

- 17 (2) A person who is not, or is not acting for, an RTO operating within  
18 the RTO's scope of registration commits an offence if the person—

- 19 (a) claims that the person can issue, or purports to issue, a  
20 qualification or statement of attainment; or
- 21 (b) claims that the person can provide, or purports to provide,  
22 training or assessments resulting in the issue of a qualification  
23 or statement of attainment.

24 Maximum penalty: 50 penalty units.

- 25 (3) A person commits an offence if—

- 26 (a) the person claims that the person can provide training resulting  
27 in the issue of a qualification or statement of attainment by  
28 someone else; and

- 1 (b) the claim is not correct because—
- 2 (i) the first person cannot provide that training; or
- 3 (ii) the other person cannot issue the qualification or
- 4 statement of attainment.
- 5 Maximum penalty: 50 penalty units.
- 6 (4) For this section, a person claims to be an RTO or claims that the
- 7 person can do a particular thing if the person—
- 8 (a) makes that claim; or
- 9 (b) says or does anything likely to induce someone else to believe
- 10 the person is an RTO or can do the particular thing.
- 11 (5) This section does not apply to a registering body.
- 12 (6) An offence against this section is a strict liability offence.

1 **Part 3.4** **National scheme—compliance**  
2 **and information**

3 **45 Function may be used to support national scheme**

4 (1) This section applies to a person who, apart from this section, may  
5 exercise a function under this chapter in relation to an RTO or an  
6 applicant for registration under section 33 (Decision about  
7 registration as RTO).

8 (2) The person may also exercise the same kind of function in the  
9 ACT—

10 (a) at the request of the council—for inquiries into whether an  
11 RTO registered by another registering body is complying with  
12 this chapter or a corresponding law; or

13 (b) at the request of another registering body—for a compliance  
14 audit that is being conducted under a corresponding law in  
15 relation to—

16 (i) an RTO registered by the other registering body; or

17 (ii) an applicant for registration by the other registering body  
18 under a corresponding law for section 33.

19 (3) Subsection (2) does not limit the person's functions.

20 **46 Information may be made available to other registering**  
21 **bodies**

22 (1) The council may disclose to another registering body information it  
23 has about, or arising from, the following:

24 (a) an application for registration as a training organisation;

25 (b) an RTO's registration;

26 (c) a compliance audit conducted by the council;

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- 1           (d) action taken by the council in relation to an RTO;
- 2           (e) the exercise of a function by a person at the request of another
- 3                 registering body.
- 4       (2) A person disclosing information under subsection (1) or under a
- 5         corresponding law for subsection (1) does not contravene an
- 6         obligation not to disclose the information, whether imposed by a law
- 7         in force in any jurisdiction or by another rule of law.



1 **Part 3.5** **Accredited courses—**  
2 **vocational education**

3 **47 Applying in the ACT for accreditation—vocational course**

- 4 (1) A person may apply to the council to have a vocational educational  
5 and training course accredited.

6 *Note* If a form is approved under s 112 (Approved forms) for an application,  
7 the form must be used.

- 8 (2) The applicant must give the council any information required by it  
9 to decide the application.

10 **48 Decision about accreditation—vocational course**

- 11 (1) On an application to have a vocational educational and training  
12 course accredited under this part, the council must accredit the  
13 course or refuse to do so.

- 14 (2) In deciding the application, the council must apply the standards for  
15 accreditation of courses.

- 16 (3) Subsection (2) does not limit the grounds on which the council may  
17 refuse to accredit the course.

- 18 (4) If the council decides to accredit the course, it must register the  
19 course as an accredited course.

20 **49 Expert committee for pt 3.5**

- 21 (1) The council must establish a committee under part 2.3 (Council  
22 committees) to help the council in deciding an application to  
23 accredit a course under this part.

- 24 (2) The committee must include as members people who are, in the  
25 council's opinion—

- 26 (a) qualified in the area of study of the course; and

- 1 (b) qualified to assess—  
2 (i) the educational and management capacity of the proposed  
3 provider of the course; and  
4 (ii) the suitability of the course and of the proposed methods  
5 of delivery of the course.

6 **50 Period of accreditation—vocational course**

7 Accreditation of a vocational educational and training course may  
8 be for a period of up to 5 years, and may be renewed if application  
9 for renewal is made at least 6 months before the day the  
10 accreditation ends.

11 **51 Cancelling accreditation—vocational course**

12 The council may cancel the accreditation of a vocational education  
13 and training course that has been accredited by the council, on 1 or  
14 more of the following grounds:

- 15 (a) the course does not meet the standards for accreditation of  
16 courses;  
17 (b) the course provider does not have the educational or  
18 management capacity to provide the course;  
19 (c) the method of delivery is not suitable for the course.

20 **52 Cancellation of accreditation—vocational course**  
21 **previously agreed**

- 22 (1) This section applies to a vocational educational and training course  
23 being provided by a person if—  
24 (a) the council cancels the accreditation of the course; and  
25 (b) before the cancellation took effect, the person entered into an  
26 agreement to provide the course to someone else; and

1 (c) the council approves the provision of the course under  
2 subsection (2).

3 (2) On application by the person, the council may approve the provision  
4 of the course under the agreement for a period ending no later than  
5 12 months after the cancellation, unless the council considers that  
6 there are circumstances justifying the refusal of the application.

7 **Example of circumstance**

8 danger of injury to anyone's health or safety

9 *Note* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

12 (3) The accreditation of the course is taken to continue during the  
13 period stated in the approval for the purposes only of enabling the  
14 person to—

15 (a) provide the course; or

16 (b) issue any qualification or statement of attainment in relation to  
17 the course.

18 (4) The council may, in exceptional circumstances, direct the person to  
19 immediately stop conducting the operations mentioned in  
20 subsection (3).

21 **Example of exceptional circumstance**

22 danger of injury to anyone's health or safety

23 (5) If the council gives a direction to a person under subsection (4), the  
24 accreditation of the course is taken to be cancelled for all purposes  
25 from the day after the day the direction is given.

26 **53 Registering end of accreditation**

27 If the accreditation of a vocational educational and training course  
28 ends (whether by expiry or cancellation), the council must remove  
29 the details of the course from the national register.

- 1 **54 Offence to falsely claim vocational education course**  
2 **accredited**
- 3 (1) A person commits an offence if the person—
- 4 (a) either—
- 5 (i) claims to provide an accredited course; or
- 6 (ii) claims to provide, or provides, a course under a title or  
7 description that is substantially the same as that of any  
8 course listed in the AQF as a vocational education and  
9 training course; and
- 10 (b) the course is not an accredited course.
- 11 Maximum penalty: 50 penalty units.
- 12 (2) For subsection (1), a person claims to provide an accredited course  
13 if the person—
- 14 (a) makes that claim; or
- 15 (b) claims to provide a course that purports to be an accredited  
16 course; or
- 17 (c) says or does anything likely to induce someone else to believe  
18 a course the person is providing is accredited.
- 19 (3) An offence against this section is a strict liability offence.

1 **Part 3.6** **Disagreements under**  
2 **chapter 3**

3 **55 Disagreement with decision of council under s 33 or s 48**

4 (1) This section applies if an applicant disagrees with a decision of the  
5 council in relation to an application for—

6 (a) registration as a training organisation under section 33  
7 (Decision about registration as RTO); or

8 (b) accreditation of a vocational education and training course  
9 under section 48 (Decision about accreditation—vocational  
10 education course); or

11 (2) The applicant may, within 14 days after the day the applicant is  
12 notified of the decision under section 105 (Notice of reviewable  
13 decisions), ask the council to refer the disagreement to a committee  
14 for resolution.

15 (3) As soon as practicable after receiving the request for referral, the  
16 council must refer the disagreement to a committee.

17 (4) Within 28 days after the day the committee receives the referral, the  
18 committee must attempt to resolve the disagreement and report to  
19 the council about the outcome.

1 **Chapter 4 Higher education—**  
2 **non-universities**

3 **Part 4.1 Preliminary**

4 **56 Application of ch 4**

5 This chapter applies to the provision, by providers other than  
6 universities, of higher education courses leading to higher education  
7 awards.

1 **Part 4.2** **ACT register**

2 **57 ACT register of higher education providers**

- 3 (1) The council must establish and maintain a register to be known as  
4 the ACT register of higher education providers.
- 5 (2) For this chapter, a person or matter is registered if details of the  
6 person or matter are recorded on the register.

1 **Part 4.3** **Registered higher education**  
2 **providers**

3 **58 Scope of registration of higher education provider**

4 For this Act, a higher education provider's *scope of registration*  
5 consists of—

- 6 (a) the courses the person is registered to provide; and  
7 (b) the higher education awards for which the person is registered  
8 to provide courses.

9 **59 Application for registration as higher education provider**

- 10 (1) A person may apply to the council for registration as a higher  
11 education provider.

12 *Note* If a form is approved under s 112 (Approved forms) for an application,  
13 the form must be used.

- 14 (2) The applicant must give the council any information required by it  
15 to decide the application.

16 **60 Decision about registration as higher education provider**

- 17 (1) On an application for registration, the council must register the  
18 applicant as a higher education provider, or refuse to do so.

- 19 (2) In deciding the application, the council must apply the higher  
20 education standards.

- 21 (3) The council may register the applicant only if—

- 22 (a) a compliance audit has been conducted of the applicant that  
23 shows that the applicant complies with the higher education  
24 standards (other than any legislative compliance standard); or



- 1 (b) if the applicant is recognised in a foreign country as a higher  
2 education provider—
- 3 (i) the authority in that country that recognised the applicant  
4 is, in the Minister’s opinion, the competent authority for  
5 the purpose; and
- 6 (ii) the Minister is reasonably satisfied that the applicant  
7 complies with the higher education standards.
- 8 (4) In deciding the application, the council may consult with relevant  
9 people or professional or industry bodies and any committee  
10 established by the council for section 62 (Expert committee for  
11 pt 4.3).
- 12 (5) The council may impose conditions on the registration of the  
13 applicant as a higher education provider.
- 14 (6) A condition must be consistent with this chapter and the national  
15 protocols.
- 16 (7) If the council decides to register the applicant, it must—
- 17 (a) register the applicant as a registered higher education provider;  
18 and
- 19 (b) register details of the applicant’s scope of registration.

20 **61 Decision about registration—registration of higher**  
21 **education provider previously cancelled**

- 22 (1) Despite section 60, the council must refuse to register an applicant  
23 as a higher education provider if—
- 24 (a) the applicant, or an associate of the applicant, has previously  
25 been registered as a higher education provider; and
- 26 (b) the registration of the higher education provider was cancelled  
27 (other than on the application of higher education provider)  
28 less than 12 months before the day the application for  
29 registration is made.

1 (2) In this section:

2 *associate*—a person is an *associate* of someone else in relation to a  
3 higher education provider if the person can, or will be able to, have  
4 a significant influence over, or in relation to, the carrying out of the  
5 operations of the higher education provider.

6 **62 Expert committee for pt 4.3**

7 (1) The council must establish a committee under part 2.3 (Council  
8 committees) to help the council in deciding an application under this  
9 part.

10 (2) The committee must include as members people who are, in the  
11 council's opinion—

12 (a) qualified in an area relevant to the courses proposed to be  
13 offered by the relevant higher education provider; and

14 (b) qualified to assess the financial and management capacity of  
15 the higher education provider.

16 **63 Registration conditions—higher education provider**

17 (1) Registration of a higher education provider under section 60  
18 (Decision about registration as higher education provider) is subject  
19 to—

20 (a) conditions imposed under subsection (2) ; and

21 (b) conditions imposed under section 60 (5) or 66 (1) (a)  
22 (Amending, suspending or cancelling registration without  
23 application—higher education provider).

24 (2) The following conditions of registration are imposed on a higher  
25 education provider registered under section 60:

26 (a) the provider must comply with requirements stated to apply to  
27 higher education providers under the higher education  
28 standards;

- 1 (b) the provider must, as far as practicable, give notice to the  
2 council of proposals for the following matters before they  
3 happen:
- 4 (i) any substantial change to the provider's control,  
5 management or operations;
- 6 (ii) any matter that the provider must give notice of to the  
7 council under the higher education standards;
- 8 (c) the provider must give notice to the council of a matter  
9 mentioned in paragraph (b) immediately after it happens;
- 10 (d) the provider—
- 11 (i) must submit to any compliance audit conducted by the  
12 council; and
- 13 (ii) if a compliance audit shows that the provider does not  
14 comply with the higher education standards (other than  
15 any legislative compliance standard)—must take all  
16 necessary steps to comply;
- 17 (e) the provider must not contravene a provision of this Act;
- 18 (f) the provider must give the council any information about any  
19 of its operations required by the council;
- 20 (g) the provider must give to the council any information required  
21 by the council about a condition of registration imposed under  
22 section 66 (Amending, suspending or cancelling registration  
23 without application—higher education provider);
- 24 (3) A registered higher education provider must not contravene a  
25 condition of its registration.

26 *Note* For effect of noncompliance with a condition, see s 66 (1).

1 **64 Period of registration—higher education provider**

2 Registration of a higher education provider may be for a period of  
3 up to 5 years, and may be renewed if application for renewal is  
4 made at least 6 months before the day the registration ends.

5 **65 Amending or cancelling registration on application by**  
6 **higher education provider**

7 (1) On application by a registered higher education provider, the  
8 council must amend the provider's registered details, or refuse to do  
9 so.

10 *Note* If a form is approved under s 112 (Approved forms) for an application,  
11 the form must be used.

12 (2) If the application is to amend the higher education provider's scope  
13 or conditions of registration, the provider must give the council any  
14 information required by it to decide the application.

15 (3) For an application mentioned in subsection (2), section 60 (Decision  
16 about registration as higher education provider) applies as if it were  
17 an application under that section, except that section 60 (3) (a), if it  
18 applies, only requires a compliance audit to the extent that an audit  
19 is relevant to the amendment.

20 (4) On application by a registered higher education provider for the  
21 cancellation of registration, the council must cancel the provider's  
22 registration.

23 **66 Amending, suspending or cancelling registration without**  
24 **application—higher education provider**

25 (1) On 1 or more of the grounds mentioned in subsection (2), the  
26 council may on its own initiative—

27 (a) amend the scope or conditions of registration of a registered  
28 higher education provider, including by imposing a restriction;  
29 or

- 1 (b) suspend the registration, or part of the scope of registration of a  
2 higher education provider, by imposing a prohibition while the  
3 suspension is in force; or
- 4 (c) cancel the registration of a higher education provider.
- 5 (2) The grounds are as follows:
- 6 (a) the registration, or the part of the scope of registration, was  
7 obtained because of incorrect or misleading information;
- 8 (b) the higher education provider has contravened a condition of  
9 registration.
- 10 (3) A restriction or prohibition imposed under subsection (1) (a) or (b)  
11 must be consistent with this chapter and the higher education  
12 standards.

13 **67 Effect of suspending registration of higher education**  
14 **provider**

- 15 (1) This section applies if a prohibition is imposed on a higher  
16 education provider under section 66 (1) (b) (Amending, suspending  
17 or cancelling registration without application—higher education  
18 provider).
- 19 (2) Subject to section 68 (4) (Suspension of registration—higher  
20 education course previously agreed), a person must not do anything  
21 for any of the following purposes in relation to a higher education  
22 course that is the subject of the prohibition:
- 23 (a) recruitment or enrolment;
- 24 (b) soliciting or accepting any consideration for recruitment or  
25 enrolment;
- 26 (c) starting or providing the course;

1 (d) granting a higher education award in relation to the course,  
2 unless the course was completed before the prohibition.

3 Maximum penalty: 50 penalty units.

4 (3) An offence against this section is a strict liability offence.

5 **68 Suspension of registration—higher education course**  
6 **previously agreed**

7 (1) This section applies to a registered higher education provider if—

8 (a) a prohibition is imposed on the provider under  
9 section 66 (1) (b) (Amending, suspending or cancelling  
10 registration without application—higher education provider);  
11 and

12 (b) before the prohibition took effect, the provider entered into an  
13 agreement to provide a higher education course to a person that  
14 the provider would be prohibited from providing if it were not  
15 for this section; and

16 (c) the council approves the course under subsection (2).

17 (2) On application by the higher education provider, the council may  
18 approve the provision of the course under the agreement for a period  
19 ending no later than 2 years after the prohibition started, if the  
20 council considers it is justified in the circumstances.

21 (3) In making a decision under subsection (2), the council must take  
22 into account—

23 (a) the welfare of persons to whom the course is to be provided;  
24 and

25 (b) the nature and quality of the course.

- 1 (4) The prohibition is taken not to have effect during the period stated  
2 in the approval for the purposes only of enabling the higher  
3 education provider to—
- 4 (a) provide the course; or
- 5 (b) grant a higher education award in relation to the course.
- 6 (5) Section 67 (2) (Effect of suspension of registration of higher  
7 education course) does not apply in relation to the course, subject to  
8 subsection (7).
- 9 (6) The council may, in exceptional circumstances, direct the higher  
10 education provider to immediately stop conducting the operations  
11 mentioned in subsection (4).
- 12 **Example of exceptional circumstance**  
13 danger of injury to anyone's health or safety
- 14 *Note* An example is part of the Act, is not exhaustive and may extend, but  
15 does not limit, the meaning of the provision in which it appears (see  
16 Legislation Act, s 126 and s 132).
- 17 (7) If the council gives a direction to the higher education provider  
18 under subsection (6)—
- 19 (a) the effect of the prohibition is taken to resume from the day  
20 after the day the direction is given; and
- 21 (b) in particular, section 67 (2) applies in relation to the course.

22 **69 Cancellation of registration—higher education course**  
23 **previously agreed**

- 24 (1) This section applies to a registered higher education provider if—
- 25 (a) the council cancels its registration; and
- 26 (b) before the cancellation took effect, the provider entered into an  
27 agreement to provide a higher education course to a person;  
28 and

- 1 (c) the council approves the course under subsection (2).
- 2 (2) On application by the higher education provider, the council may  
3 approve the provision of the course under the agreement for a period  
4 ending no later than 2 years after the cancellation, if the council  
5 considers it is justified in the circumstances.
- 6 (3) In making a decision under subsection (2), the council must take  
7 into account—
- 8 (a) the welfare of persons to whom the course is to be provided;  
9 and
- 10 (b) the nature and quality of the course.
- 11 (4) The registration of the higher education provider is taken to  
12 continue during the period stated in the approval for the purposes  
13 only of enabling the provider to—
- 14 (a) provide the course; or
- 15 (b) grant a higher education award in relation to the course.
- 16 (5) The council may, in exceptional circumstances, direct the higher  
17 education provider to immediately stop conducting the operations  
18 mentioned in subsection (4).
- 19 **Example of exceptional circumstance**  
20 danger of injury to anyone's health or safety
- 21 *Note* An example is part of the Act, is not exhaustive and may extend, but  
22 does not limit, the meaning of the provision in which it appears (see  
23 Legislation Act, s 126 and s 132).
- 24 (6) If the council gives a direction to the higher education provider  
25 under subsection (5), the provider's registration is taken to be  
26 cancelled for all purposes from the day after the day the direction is  
27 given.



1   **70   Registration of amendment, suspension, cancellation etc.**

2       If the registration of a higher education provider is amended or  
3       suspended, or the registration ends (whether by expiry or  
4       cancellation), the council must amend the register of ACT higher  
5       education providers as follows:

- 6           (a) for an amendment of the scope or details of registration, other  
7           than an amendment of the conditions of registration—record  
8           details of the amendment;
- 9           (b) for the end of registration—remove the registered details of the  
10          provider.

11   **71   Offence to falsely claim to be higher education provider**  
12   **etc**

- 13   (1) A person other than a university who is not a registered higher  
14   education provider commits an offence if the person claims to be a  
15   higher education provider.

16       Maximum penalty: 100 penalty units.

- 17   (2) A person who is not, or is not acting for, a registered higher  
18   education provider commits an offence if the person operates as a  
19   higher education provider in the ACT.

20       Maximum penalty: 50 penalty units.

- 21   (3) A registered higher education provider must not operate as a higher  
22   education provider outside the scope of registration of the provider.

23       Maximum penalty: 50 penalty units.

- 24   (4) For subsection (2) or (3), a person operates as a higher education  
25   provider in the ACT if the person—

26          (a) offers to provide in the ACT a higher education course; or

27          (b) provides a higher education course in the ACT; or

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- 1 (c) claims that the person can provide a higher education course in  
2 the ACT; or
- 3 (d) claims that the person can issue a higher education award in  
4 the ACT.
- 5 (5) For this section, a person claims that the person can do a thing if the  
6 person—
- 7 (a) makes that claim; or
- 8 (b) says or does anything likely to induce someone else to believe  
9 that the person can do the particular thing.
- 10 (6) For this section, a person is taken to operate as a higher education  
11 provider in the ACT if the person does a thing mentioned in  
12 subsection (2) or (3)—
- 13 (a) as the agent of someone else; or
- 14 (b) under a franchise arrangement that applies to all or part of the  
15 ACT (whether or not it also applies to a place outside the  
16 ACT).
- 17 (7) Also, for this section, a person is taken to operate as a higher  
18 education provider in the ACT if the person does a thing mentioned  
19 in subsection (4) in or from the ACT by means of—
- 20 (a) a computer adapted for communicating by way of the internet  
21 or another communications network; or
- 22 (b) a television receiver adapted to allow the viewer to transmit  
23 information by way of a cable television network or other  
24 communications network; or
- 25 (c) a telephone; or
- 26 (d) any other electronic device.
- 27 (8) An offence against this section is a strict liability offence.

1 **Part 4.4** **Accredited courses—higher**  
2 **education**

3 **72 Applying for accreditation—higher education course**

- 4 (1) A person may apply to the council to have a higher education course  
5 accredited.

6 *Note* If a form is approved under s 112 (Approved forms) for an application,  
7 the form must be used.

- 8 (2) The applicant must give the council any information required by it  
9 to decide the application.

10 **73 Decision about accreditation—higher education course**

- 11 (1) On an application to have a higher education course accredited  
12 under this part, the council must grant the accreditation, or refuse to  
13 do so.

- 14 (2) In deciding the application, the council must apply the higher  
15 education standards.

- 16 (3) Subsection (2) does not limit the grounds on which the council may  
17 refuse to accredit the course.

- 18 (4) If the council decides to accredit the course, it must register the  
19 course as an accredited course.

20 **74 Expert committee for pt 4.4**

- 21 (1) The council must establish a committee under part 2.3 (Council  
22 committees) to help the council in deciding an application to  
23 accredit a course under this part.

- 24 (2) The committee must include as members people who are, in the  
25 council's opinion—

- 26 (a) qualified in the area of study of the course; and

- 1 (b) qualified to assess—  
2 (i) the educational and management capacity of the proposed  
3 provider of the course; and  
4 (ii) the suitability of the course and of the proposed methods  
5 of delivery of the course.

6 **75 Period of accreditation—higher education course**

7 Accreditation of a higher education course may be for a period of up  
8 to 5 years and may be renewed if application for renewal is made at  
9 least 6 months before the day the accreditation ends.

10 **76 Cancelling accreditation—higher education course**

- 11 (1) The council must cancel the accreditation of a higher education  
12 course on application by the person providing the course.  
13 (2) The council may cancel the accreditation of a higher education  
14 course in the circumstances prescribed under the regulations.

15 **77 Cancellation of accreditation—higher education course**  
16 **previously agreed**

- 17 (1) This section applies to a higher education course being provided by  
18 a person if—  
19 (a) the council cancels the accreditation of the course; and  
20 (b) before the cancellation took effect, the person entered into an  
21 agreement to provide the course to someone else; and  
22 (c) the council approves the provision of the course under  
23 subsection (2).  
24 (2) On application by the person, the council may approve the provision  
25 of the course under the agreement for a period ending no later than  
26 2 years after the cancellation, if the council considers it is justified  
27 in the circumstances.

- 1 (3) In making a decision under subsection (2), the council must take  
2 into account—
- 3 (a) the welfare of persons to whom the course is to be provided;  
4 and
- 5 (b) the nature and quality of the course.
- 6 (4) The accreditation of the course is taken to continue during the  
7 period stated in the approval for the purposes only of enabling the  
8 person to—
- 9 (a) provide the course; or
- 10 (b) issue a higher education award in relation to the course.
- 11 (5) The council may, in exceptional circumstances, direct the person to  
12 immediately stop conducting the operations mentioned in  
13 subsection (4).
- 14 **Example of exceptional circumstance**  
15 danger of injury to anyone's health or safety
- 16 *Note* An example is part of the Act, is not exhaustive and may extend, but  
17 does not limit, the meaning of the provision in which it appears (see  
18 Legislation Act, s 126 and s 132).
- 19 (6) If the council gives a direction to a person under subsection (4), the  
20 accreditation of the course is taken to be cancelled for all purposes  
21 from the day after the day the direction is given.

## 22 **78 Registering end of accreditation**

23 If the accreditation of a higher education course ends (whether by  
24 expiry or cancellation), the council must remove the details of the  
25 course from the ACT register of higher education providers.

- 1 **79 Offence to falsely claim higher education course**  
2 **accredited**
- 3 (1) A person other than a university who claims to provide a higher  
4 education course commits an offence if the course is not an  
5 accredited course.
- 6 Maximum penalty: 50 penalty units.
- 7 (2) For subsection (1), a person claims to provide a higher education  
8 course if the person—
- 9 (a) makes that claim; or
- 10 (b) says or does anything likely to induce someone else to believe  
11 a course the person is providing is a higher education course.
- 12 (3) An offence against this section is a strict liability offence.

1 **Part 4.5** **Disagreements under**  
2 **chapter 4**

3 **80 Disagreement with decision of council under s 60 or s 73**

4 (1) This section applies if an applicant disagrees with a decision of the  
5 council in relation to an application for—

6 (a) registration as a higher education provider under section 60  
7 (Decision about registration as higher education provider); or

8 (b) accreditation of a course under section 73 (Decision about  
9 accreditation—higher education course).

10 (2) The applicant may, within 14 days after the day the applicant is  
11 notified of the decision under section 105 (Notice of reviewable  
12 decisions), ask the council to refer the disagreement to a committee  
13 for resolution.

14 (3) As soon as practicable after receiving the request for referral, the  
15 council must refer the disagreement to a committee.

16 (4) Within 28 days after the day the committee receives the referral, the  
17 committee must attempt to resolve the disagreement and report to  
18 the council about the outcome.

1 **Chapter 5**                    **Higher education—**  
2    **universities**

3 **Part 5.1**                    **Operation of universities in**  
4    **the ACT**

5 **81**      **Universities to be established, recognised or approved**

6 (1) A person must not operate, or purport to operate, in the ACT as a  
7 university, or part of a university, unless the person is—

8 (a) established, recognised or approved as a university under this  
9 Act; or

10 (b) established under another law of the Territory; or

11 (c) established under a law of the Commonwealth or a State and  
12 not subject to a declaration under section 82.

13 Maximum penalty: 100 penalty units.

14 (2) An offence against this section is a strict liability offence.

15 **82**      **Declaration that university may not operate in ACT**

16 (1) This section applies to a university that is established under a law of  
17 the Commonwealth or a State (other than a law of the Territory).

18 (2) If the Minister is not satisfied that the university can meet the  
19 requirements of section 89 (Characteristics and role of university) in  
20 relation to its operations in the ACT, the Minister may declare, in  
21 writing, that the university must not operate, or purport to operate,  
22 in the ACT as a university, or part of a university, unless it is  
23 recognised under part 5.3 (Establishment or recognition of  
24 universities in the ACT).



- 1 **83 What is meant by operating as a university?**
- 2 (1) For this chapter, a person operates in the ACT as a university, or  
3 part of a university, if the person—
- 4 (a) offers to provide a higher education course in the ACT as a  
5 university; or
- 6 (b) provides a higher education course in the ACT as a university;  
7 or
- 8 (c) claims to be able to provide a higher education course in the  
9 ACT as a university; or
- 10 (d) claims to be able to issue a higher education award in the ACT  
11 as a university.
- 12 (2) For subsection (1), a person claims to be able to do a thing if the  
13 person—
- 14 (a) makes that claim; or
- 15 (b) says or does anything likely to induce someone else to believe  
16 that the person can do the particular thing.
- 17 (3) A person is taken to operate in the ACT as a university, or part of a  
18 university, if the person does a thing mentioned in subsection (1)—
- 19 (a) as the agent of someone else; or
- 20 (b) under a franchise arrangement that applies to all or part of the  
21 ACT (whether or not it also applies to a place outside the  
22 ACT).
- 23 (4) Also, a person is taken to operate in the ACT as a university, or part  
24 of a university, if the person does a thing mentioned in  
25 subsection (1) in or from the ACT by means of—
- 26 (a) a computer adapted for communicating by way of the internet  
27 or another communications network; or

- 1 (b) a television receiver adapted to allow the viewer to transmit  
2 information by way of a cable television network or other  
3 communications network; or
- 4 (c) a telephone; or
- 5 (d) any other electronic device.

6 **84 Who can use title of ‘university’?**

- 7 (1) A person must not, by use of the title ‘university’, ‘university  
8 college’ or a similar title (whether alone or in combination with  
9 other titles), claim that the person is a university or part of a  
10 university unless the person is a university or part of a university, or  
11 is the agent of a university or part of a university.

12 Maximum penalty: 200 penalty units

- 13 (2) This section does not apply to the University of the Third Age  
14 (U3A).

- 15 (3) For this section, a person claims to be a university or part of a  
16 university if the person—

- 17 (a) makes that claim; or
- 18 (b) says or does anything likely to induce someone else to believe  
19 the person is a university or part of a university.

- 20 (4) An offence against subsection (1) is a strict liability offence.

1 **Part 5.2 University advisory panels**

2 **85 Establishment of panel**

- 3 (1) If the Minister receives a proposal under section 87 (Proposal for  
4 ACT university) or an application under section 94 (Application for  
5 approval as foreign university), the Minister must establish a  
6 *university advisory panel*.
- 7 (2) The Minister may also establish a university advisory panel for a  
8 review under section 93 (Review of operations of university).
- 9 (3) A panel must consist of at least 3 people who, in the Minister's  
10 opinion, have substantial knowledge and experience of academic  
11 affairs or university management.
- 12 (4) In establishing a panel, the Minister must consult with the council.

13 **86 Panel guidelines**

- 14 (1) The Minister may, in consultation with the council, make guidelines  
15 for the consideration by a university advisory panel of proposals for  
16 the establishment or recognition of universities in the ACT and  
17 applications for approval by foreign universities.
- 18 (2) The guidelines may include criteria for establishment, recognition or  
19 approval of a university.
- 20 (3) The guidelines are a disallowable instrument.

21 *Note* A disallowable instrument must be notified, and presented to the  
22 Legislative Assembly, under the Legislation Act.

1 **Part 5.3** **Establishment or recognition**  
2 **of universities in the ACT**

3 **87 Proposal for ACT university**

- 4 (1) A corporation (a *proposed university*) may propose, in writing to the  
5 Minister, that it should be established, or recognised, in the ACT as  
6 a university.

7 *Note* If a form is approved under s 112 (Approved forms) for an approval, the  
8 form must be used.

- 9 (2) The proposal must include—

10 (a) detailed information about how the proposed university has the  
11 characteristics, and fulfils the role, of a university; and

12 (b) any other information required under the regulations.

- 13 (3) The proposed university must give the Minister any other  
14 information required by the Minister to consider the proposal.

15 **88 Declaration of ACT university**

- 16 (1) On a proposal under section 87, the Minister must declare, in  
17 writing, that the proposed university is established or recognised as  
18 a university, or refuse to do so.

- 19 (2) A declaration—

20 (a) may impose conditions on the establishment or recognition of  
21 the university, consistent with this chapter and the national  
22 protocols; and

23 (b) must state a period of establishment or recognition of no longer  
24 than 5 years.

1 (3) A declaration is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the  
3 Legislative Assembly, under the Legislation Act.

4 (4) The Minister must not make a declaration about a proposed  
5 university unless—

6 (a) the university advisory panel has reported to the Minister under  
7 section 91 about the proposal; and

8 (b) taking into consideration the panel's report, the Minister is  
9 satisfied the proposed university has the characteristics, and  
10 fulfils the role, of a university.

11 (5) The Minister must give the proposed university a copy of a  
12 declaration.

### 13 **89 Characteristics and role of university**

14 A proposed university has the characteristics, and fulfils the role, of  
15 a university if—

16 (a) it meets the criteria for a university stated in the national  
17 protocols; and

18 (b) it has appropriate accounting, financial and staffing resources  
19 in the ACT; and

20 (c) it meets any relevant guidelines under section 86 (Panel  
21 guidelines); and

22 (d) it satisfies any other reasonable requirements of the Minister.

### 23 **90 Panel to consider proposal**

24 (1) After receiving a proposal from a proposed university for the  
25 establishment or recognition of a university in the ACT, the Minister  
26 must refer the proposal to a university advisory panel.

27 (2) The panel must decide the extent to which the proposed university  
28 has the characteristics, and fulfils the role, of a university.

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- 1 (3) The panel must consider—  
2 (a) the proposal; and  
3 (b) other information given to the Minister by the proposed  
4 university; and  
5 (c) if the council has commented on the proposal, the council’s  
6 comments; and  
7 (d) any other relevant information available; and  
8 (e) any guidelines under section 86 (Panel guidelines).  
9 (4) In considering the proposal, the panel must consult with relevant  
10 academic, professional or industry bodies.

11 **91 Panel to report to Minister**

- 12 (1) The university advisory panel must give a written report to the  
13 Minister about the proposal, within the time agreed between the  
14 Minister and the panel.  
15 (2) The report must include—  
16 (a) an analysis of the extent to which the proposed university has  
17 the characteristics, or fulfils the role, of a university; and  
18 (b) the panel’s recommendation about whether the proposed  
19 university should or should not be established or recognised as  
20 a university and its reasons for the recommendation; and  
21 (c) any conditions on establishment or recognition recommended  
22 by the panel.

1 **92 Conditions of establishment or recognition of ACT**  
2 **university**

- 3 (1) The establishment or recognition of a university under this part is  
4 subject to—
- 5 (a) conditions imposed under subsection (2) ; and  
6 (b) conditions imposed under section 88 (2) (Declaration of ACT  
7 university).
- 8 (2) The following conditions of establishment or recognition of a  
9 university under this part are imposed on a university:
- 10 (a) the university must comply with requirements stated to apply  
11 to universities under the national protocols;
- 12 (b) the university must, as far as practicable, give notice to the  
13 Minister of any proposed substantial change to the university's  
14 control, management or operations before the change happens;
- 15 (c) the university must give notice to the Minister of any change  
16 mentioned in paragraph (b) immediately after the change  
17 happens.
- 18 (d) the university must not contravene a provision of this Act;  
19 (e) the university must give to the Minister any information about  
20 any of its operations required by the Minister.
- 21 (3) A university must not contravene a condition of its registration.

22 **93 Review of operations of university**

- 23 (1) The Minister may at any time arrange for a review by a university  
24 advisory panel of the operation of a university established or  
25 recognised under this part.
- 26 (2) If the Minister is satisfied after the review that it is in the interests of  
27 the students enrolled at the university or in the public interest to do  
28 so, the Minister may, in writing—

**Chapter 5**  
**Part 5.3**

Higher education—universities  
Establishment or recognition of universities in the ACT

Section 93

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- 1           (a) amend the declaration of establishment or recognition of the  
2                    university by imposing a condition; or  
3           (b) suspend the declaration; or  
4           (c) repeal the declaration.

5           *Note*     An instrument under subsection (2) amending or repealing a declaration  
6                    is a disallowable instrument (see Legislation Act, s 42) and must be  
7                    notified and presented to the Legislative Assembly.



1 **Part 5.4** **Foreign universities in the**  
2 **ACT**

3 **94 Application for approval as foreign university**

- 4 (1) A foreign university may apply to the Minister for approval under  
5 this part as a university.

6 *Note* If a form is approved under s 112 (Approved forms) for an application,  
7 the form must be used.

- 8 (2) The university must give the Minister—

9 (a) information about its recognition by the relevant accreditation  
10 body in the country where it is established; and

11 (b) any other information required by the Minister to decide the  
12 application.

13 **95 Decision about approval as foreign university**

- 14 (1) On an application for approval, the Minister may give the approval  
15 to the university, or refuse to do so.

16 (2) An approval may be given subject to conditions stated in the  
17 approval that are consistent with this chapter and the national  
18 protocols.

- 19 (3) An approval under this section is a disallowable instrument.

20 *Note* A disallowable instrument must be notified, and presented to the  
21 Legislative Assembly, under the Legislation Act.

- 22 (4) The Minister must not give approval unless the Minister is satisfied  
23 about—

24 (a) the legal status of the university and its standing in the country  
25 where it is established (including recognition by the relevant  
26 accreditation body); and

1 (b) the adequacy of the proposed arrangements for the university's  
2 operation in the ACT, having regard to the national protocols.

3 (5) In deciding the application, the Minister must consult with a  
4 university advisory panel.

5 **96 Period of approval—foreign university**

6 Approval as a foreign university may be for a period of up to  
7 5 years, and may be renewed if application for renewal is made at  
8 least 6 months before the day the approval ends.

9 **97 Conditions of foreign university approval**

10 (1) The approval of a foreign university under this part is subject to—

11 (a) conditions imposed under subsection (2) ; and

12 (b) conditions imposed under section 95 (2) (Decision about  
13 approval as foreign university).

14 (2) The following conditions of approval under this part are imposed on  
15 a foreign university:

16 (a) the university must comply with requirements stated to apply  
17 to universities under the national protocols;

18 (b) the university must, as far as practicable, give notice to the  
19 Minister of any proposed substantial change to the university's  
20 control, management or operations before the change happens;

21 (c) the university must give notice to the Minister of any change  
22 mentioned in paragraph (b) immediately after the change  
23 happens;

24 (d) the university must not contravene a provision of this Act;

25 (e) the university must give to the Minister any information about  
26 any of its operations required by the Minister.

27 (3) A university must not contravene a condition of its registration.

1 **98 Review of operations of foreign university**

2 (1) The Minister may at any time arrange for a review by a university  
3 advisory panel of the operation of a foreign university approved  
4 under this part.

5 (2) If the Minister is satisfied after the review that it is in the interests of  
6 the students enrolled at the university or in the public interest to do  
7 so, the Minister may, in writing—

8 (a) amend the approval by imposing a condition; or

9 (b) suspend the approval; or

10 (c) repeal the approval.

11 *Note* An instrument under subsection (2) amending or repealing a declaration  
12 is a disallowable instrument (see Legislation Act, s 42) and must be  
13 notified and presented to the Legislative Assembly.

1 **Chapter 6**                    **General**

2 **Part 6.1**                    **Visits to premises**

3 **99**    **Visits by council—RTO premises**

- 4        (1) The council may give an RTO written notice that a council member,  
5            a staff member of the council or a person authorised by the council  
6            proposes to visit premises where the RTO is giving, or proposing to  
7            give, vocational education and training courses.
- 8        (2) A notice under subsection (1) must—
- 9            (a) state the address of the premises proposed to be visited; and
- 10           (b) state the purpose of the visit; and
- 11           (c) state the day and time of the proposed visit; and
- 12           (d) be given to the RTO at least 7 days before the day of the  
13           proposed visit.
- 14        (3) The day and time of the proposed visit must be a day and time when  
15           the RTO normally conducts business on the premises.
- 16        (4) The member, staff member or authorised person may, on the day  
17           and at the time stated in the notice—
- 18           (a) enter the premises stated in the notice; or
- 19           (b) observe the operations of the RTO on the premises; or
- 20           (c) ask the RTO to give information about its operations; or
- 21           (d) ask the RTO to produce any document in the possession of the  
22           RTO containing information about courses given, or proposed  
23           to be given, on the premises.

- 1 (5) A member, staff member or authorised person may, in exceptional  
2 circumstances, do a thing mentioned in subsection (4) (a) to (d)  
3 without notice.

4 **Example of exceptional circumstance**

5 danger of injury to anyone's health or safety

6 *Note* An example is part of the Act, is not exhaustive and may extend, but  
7 does not limit, the meaning of the provision in which it appears (see  
8 Legislation Act, s 126 and s 132).

9 **100 Visits by council—higher education provider premises**

10 (1) The council may give a registered higher education provider written  
11 notice that a council member, a staff member of the council or a  
12 person authorised by the council proposes to visit premises where  
13 the provider is conducting, or proposing to conduct, higher  
14 education courses.

15 (2) A notice under subsection (1) must—

- 16 (a) state the address of the premises proposed to be visited; and  
17 (b) state the day and time of the proposed visit; and  
18 (c) state the purpose of the visit; and  
19 (d) be given to the higher education provider at least 7 days before  
20 the day of the proposed visit.

21 (3) The day and time of the proposed visit must be a day and time when  
22 the higher education provider normally conducts business on the  
23 premises.

24 (4) The member, staff member or authorised person may, on the day  
25 and at the time stated in the notice—

- 26 (a) enter the premises stated in the notice; or  
27 (b) observe the operations of the higher education provider; or

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- 1 (c) ask the higher education provider to give information about its  
2 operations; or
- 3 (d) ask the higher education provider to produce any document in  
4 the possession of the provider containing information relating  
5 courses given, proposed to be given or previously given, on the  
6 premises.
- 7 (5) A member, staff member or authorised person may, in exceptional  
8 circumstances, do a thing mentioned in subsection (4) (a) to (d)  
9 without notice.
- 10 **Example of exceptional circumstance**  
11 danger of injury to anyone's health or safety
- 12 *Note* An example is part of the Act, is not exhaustive and may extend, but  
13 does not limit, the meaning of the provision in which it appears (see  
14 Legislation Act, s 126 and s 132).

15 **101 Identity cards**

- 16 (1) The council may give a person who may conduct visits under this  
17 part an identity card that states the person's name and position, and  
18 shows—
- 19 (a) the date of issue of the card; and  
20 (b) the date of expiry of the card; and  
21 (c) anything else prescribed under the regulations.
- 22 (2) A person who is given an identity card commits an offence if the  
23 person fails to return it to the council as soon as practicable, but  
24 within 7 days, after the day the person is asked by the council to  
25 return the card.
- 26 Maximum penalty: 1 penalty unit.
- 27 (3) An offence against this section is a strict liability offence.

1 **102 Production of identity card**

2 A person who has entered premises under this part must not remain  
3 on the premises if, on request by the occupier, the person, or  
4 someone accompanying that person, does not produce his or her  
5 identity card.

6 **103 Obstructing visits**

7 (1) This section applies if the council is satisfied that an RTO or  
8 registered higher education provider—

9 (a) without reasonable excuse, obstructs or hinders a person  
10 entering premises or observing a course under this part; or

11 (b) refuses to give information, or gives information that the  
12 higher education provider knows is false or misleading, in  
13 response to a request under this part; or

14 (c) refuses to produce a document, or produces a document that  
15 the higher education provider knows contains false or  
16 misleading information, in response to a request under this  
17 part.

18 (2) The authority may suspend or cancel the registration of the RTO or  
19 registered higher education provider.

1 **Part 6.2** **Review of decisions**

2 **104 Definition for pt 6**

3 In this part:

4 *reviewable decision* means a decision mentioned in schedule 1,  
5 column 3 under a provision of this Act mentioned in schedule 1,  
6 column 2 in relation to the decision.

7 **105 Notice of reviewable decisions**

8 (1) If the council or the Minister makes a reviewable decision, the  
9 council or the Minister (as the case requires) must give written  
10 notice of the decision and the reasons for the decision to each person  
11 mentioned in schedule 1, column 4 in relation to the decision.

12 (2) The notice must be in accordance with the requirements of the code  
13 of practice in force under the *Administrative Appeals Tribunal Act*  
14 *1989*, section 25B (1).

15 **106 Review by AAT of reviewable decisions**

16 A person may apply in writing to the administrative appeals tribunal  
17 for review of a reviewable decision.

18 **107 Modification of Administrative Appeals Tribunal Act, s 27**

19 (1) This section applies in relation to a reviewable decision to which  
20 section 55 (Disagreement with decision of council under s 33 or  
21 s 48) or section 80 (Disagreement with decision of council under  
22 s 60 or s 73) applies.

23 (2) A person is not entitled to apply under section 111 for review of a  
24 decision—

25 (a) until after the end of the period when a request under  
26 section 55 (2) or 80 (2) may be made; or



- 1           (b) if a request under section 55 (2) or 80 (2) has been made, until  
2           the earlier of—
- 3                 (i) the day the person who made the request is notified of the  
4                 outcome of the attempt to resolve the disagreement; or
- 5                 (ii) the day after the end of the period mentioned in  
6                 section 55 (4) or 80 (4).
- 7           (3) If a request has been made under section 55 (2) or 80 (2) in relation  
8           to a decision, the prescribed time for lodging an application with the  
9           AAT is the period beginning on the day when the person who made  
10          the request becomes entitled under subsection (2) (b) to make the  
11          application and ending on the 28th day after that day.

- 1 **Part 6.3**                      **Other provisions**
- 2 **108 False or misleading statements in applications etc**
- 3 (1) A person commits an offence if—
- 4        (a) the person makes a statement (whether orally, in a document or
- 5                in any other way); and
- 6        (b) the person does so knowing that the statement—
- 7                (i) is false or misleading; or
- 8                (ii) omits anything without which the statement is
- 9                        misleading; and
- 10        (c) the statement is made—
- 11                (i) in, or in relation to—
- 12                        (A) an application for registration as an RTO; or
- 13                        (B) an application for accreditation of a vocational
- 14                                education course; or
- 15                        (C) an application for registration as a higher education
- 16                                provider; or
- 17                        (D) an application for accreditation of a higher
- 18                                education course; or
- 19                        (E) a proposal for establishment or recognition as a
- 20                                university in the ACT; or
- 21                        (F) an application for approval to operate in the ACT as
- 22                                a university; or

1 (ii) in response to a request for information under  
2 section 99 (4) (c) (Visits by council—RTO premises) or  
3 section 100 (4) (c) (Visits by council—higher education  
4 provider premises).

5 Maximum penalty: 100 penalty units.

6 (2) Subsection (1) (b) (i) does not apply if the statement is not false or  
7 misleading in a material particular.

8 (3) Subsection (1) (b) (ii) does not apply if the omission does not make  
9 the statement misleading in a material particular.

10 (4) A person commits an offence if—

11 (a) the person makes a statement (whether orally, in a document or  
12 in any other way); and

13 (b) the person is reckless as to whether the statement—

14 (i) is false or misleading; or

15 (ii) omits anything without which the statement is  
16 misleading; and

17 (c) subsection (1) (c) applies to the statement.

18 Maximum penalty: 50 penalty units.

19 (5) Subsection (4) (b) (i) does not apply if the statement is not false or  
20 misleading in a material particular.

21 (6) Subsection (4) (b) (ii) does not apply if the omission does not make  
22 the statement misleading in a material particular.

23 **109 Alternative verdict for offence against s 108**

24 (1) This section applies if, in a prosecution for an offence against  
25 section 108 (1) (False or misleading statements in applications etc),  
26 the trier of fact is not satisfied that the defendant is guilty of the  
27 offence, but is satisfied beyond reasonable doubt that the defendant  
28 is guilty of an offence against section 108 (4).

- 1        (2) The trier of fact may find the defendant not guilty of the offence  
2            against section 108 (1) but guilty of the offence against  
3            section 108 (4) only if the defendant has been given procedural  
4            fairness in relation to that finding of guilt.

5        **110 Protection from civil liability**

- 6        (1) A person exercising a function under this Act does not incur civil  
7            liability for an act or omission done honestly and without negligence  
8            for this Act.
- 9        (2) Civil liability that would, apart from this section, attach to a person  
10           attaches instead to the Territory.

11       **111 Determination of fees**

- 12       (1) The Minister may, in writing, determine fees for this Act.
- 13           *Note*     The Legislation Act contains provisions about the making of  
14                 determinations and regulations relating to fees (see pt 6.3).
- 15       (2) A determination is a disallowable instrument.
- 16           *Note*     A disallowable instrument must be notified, and presented to the  
17                 Legislative Assembly, under the Legislation Act.

18       **112 Approved forms**

- 19       (1) The council may, in writing, approve forms for this Act.
- 20       (2) If the council approves a form for a particular purpose, the approved  
21           form must be used for that purpose.
- 22           *Note*     For other provisions about forms, see Legislation Act, s 255.
- 23       (3) An approved form is a notifiable instrument.
- 24           *Note*     A notifiable instrument must be notified under the Legislation Act.

1 **113 Regulation-making power**

2 (1) The Executive may make regulations for this Act.

3 *Note* Regulations must be notified, and presented to the Legislative  
4 Assembly, under the Legislation Act.

5 (2) The regulations may provide for the registration of details in the  
6 national register or the ACT register of higher education providers  
7 not otherwise expressly provided for in this Act.

1 **Chapter 7 Transitional**

2 **114 Details on national register on commencement**

- 3 (1) The following details recorded on the national register immediately  
4 before 1 July 2003 are taken to be registered under chapter 3 or a  
5 corresponding law by the entity that recorded the detail:
- 6 (a) a training organisation's registration;
- 7 (b) a training organisation's scope and period of registration;
- 8 (c) registration of an accredited course;
- 9 (d) period of registration of an accredited course;
- 10 (e) a qualification registered for a nationally endorsed training  
11 package or accredited course.
- 12 (2) A condition of a training organisation's registration under the  
13 *Vocational Education and Training Act 1995* in force immediately  
14 before 1 July 2003 is taken to be a condition imposed under—
- 15 (a) chapter 3; or
- 16 (b) a corresponding law under which a similar condition may be  
17 imposed in similar circumstances to those applying when the  
18 condition was imposed.

19 **115 Registration of transitional RTOs**

- 20 (1) A person who was a registered training provider under the  
21 *Vocational Education and Training Act 1995* immediately before  
22 1 July 2003 is taken to be an RTO (a *transitional RTO*).
- 23 (2) The registration of a transitional RTO under this Act—

- 1 (a) is taken to be subject to any conditions under this Act that  
2 applied to its registration under the *Vocational Education and*  
3 *Training Act 1995* immediately before 1 July 2003;
- 4 (b) may be amended, suspended or cancelled as if it had been  
5 brought about under this Act; and
- 6 (c) expires on the day the earlier registration would have expired if  
7 this Act had not been made; and
- 8 (d) may be renewed under this Act, if application for renewal is  
9 made within whichever of the following periods applies:
- 10 (i) if the expiry date is 6 months or more after 1 July 2003—  
11 6 months before the expiry date;
- 12 (ii) if the expiry date is within 6 months after 1 July 2003—  
13 any time before the expiry date.
- 14 (3) If the details of a transitional RTO had not been recorded on the  
15 national register immediately before 1 July 2003, the council must  
16 record those details on the national register.

17 **116 Accreditation of transitional vocational and higher**  
18 **education courses**

- 19 (1) A vocational education course or a higher education course that was  
20 accredited under the *Vocational Education and Training Act 1995*  
21 immediately before 1 July 2003 is taken to be an accredited course  
22 (a *transitional course*) under this Act.
- 23 (2) The accreditation of a transitional course under this Act—
- 24 (a) is taken to be subject to any conditions under this Act that  
25 applied to its earlier accreditation under the *Vocational*  
26 *Education and Training Act 1995* immediately before  
27 1 July 2003;
- 28 (b) may be amended or cancelled as if it had been brought about  
29 under this Act; and

- 1 (c) expires on the day its earlier accreditation would have expired  
2 if this Act had not been made; and
- 3 (d) may be renewed under this Act, if application for renewal is  
4 made within whichever of the following periods applies:
- 5 (i) if the expiry date is on or after 1 January 2004—6 months  
6 before the expiry date;
- 7 (ii) if the expiry date is before 1 January 2004—as soon as  
8 possible after 1 July 2003.
- 9 (3) If the details of a transitional course of vocational education had not  
10 been recorded on the national register immediately before  
11 1 July 2003, the council must record those details on the national  
12 register.
- 13 (4) The council must record on the ACT register of higher education  
14 providers details of transitional courses of higher education recorded  
15 on the register kept for the purposes of the *Vocational Education  
16 and Training Act, 1995* immediately before 1 July 2003.

17 **117 Modification of ch 7's operation**

18 The regulations may modify the operation of this chapter to make  
19 provision in relation to any matter that, in the Executive's opinion,  
20 is not, or is not adequately, dealt with in this chapter.

21 **118 Expiry of ch 7**

22 This chapter expires on 30 June 2004.



## Schedule 1 Reviewable decisions

(see s 104)

| <b>column 1<br/>item</b> | <b>column 2<br/>Act provision</b>  | <b>column 3<br/>reviewable decision</b>                  | <b>column 4<br/>person to be notified</b> |
|--------------------------|--|--|---|
| 1                        | 33 (1)<br>(Decision about registration as RTO)   | refusing to register training organisation               | applicant for registration                |
| 2                        | 33 (6)   | registering training organisation subject to conditions  | applicant for registration                |
| 3                        | 37 (1)<br>(Amending registration on application by RTO)  | refusing to amend registered details of RTO              | RTO                                       |
| 4                        | 38 (2) (a) or (b)<br>(Amending, suspending or cancelling RTO registration without application) | amending scope or conditions of registration             | RTO                                       |
| 5                        | 38 (2) (c)   | suspending registration or part of scope of registration | RTO                                       |
| 6                        | 38 (2) (d)   | cancelling registration                                  | RTO                                       |

**Schedule 1**      Reviewable decisions

| <b>column 1<br/>item</b> | <b>column 2<br/>Act provision</b>  | <b>column 3<br/>reviewable decision</b>                             | <b>column 4<br/>person to be notified</b> |
|--------------------------|--|---|---|
| 7                        | 39 (1)<br>(Cancelling<br>RTO<br>registration<br>on change of<br>location of<br>operations)           | cancelling registration   | RTO                                       |
| 8                        | 41 (2)<br>(Suspension<br>of<br>registration—<br>training or<br>assessment<br>previously<br>agreed)   | refusing to approve<br>training or assessment                       | RTO                                       |
| 9                        | 42 (2)<br>(Cancellation<br>of<br>registration—<br>training or<br>assessment<br>previously<br>agreed) | refusing to approve<br>training or assessment                       | RTO                                       |
| 10                       | 48 (1)<br>(Decision<br>about<br>accreditation<br>—vocational<br>course)                              | refusing to accredit<br>vocational education<br>and training course | applicant                                 |

| <b>column 1<br/>item</b> | <b>column 2<br/>Act provision</b>   | <b>column 3<br/>reviewable decision</b>                           | <b>column 4<br/>person to be notified</b> |
|--------------------------|---|---|---|
| 11                       | 51<br>(Cancelling accreditation—vocational course)  | cancelling accreditation of vocational education course           | each provider of course                   |
| 12                       | 52 (2)<br>(Cancellation of accreditation—vocational course previously agreed)               | refusing to approve course  | each provider of course                   |
| 13                       | 60 (1)<br>(Decision about registration as higher education provider)                        | refusing to register higher education provider                    | applicant                                 |
| 14                       | 60 (5)  | registering higher education provider subject to conditions       | applicant                                 |
| 15                       | 65 (1)<br>(Amending or cancelling registration on application by higher education provider) | refusing to amend registered details of higher education provider | registered higher education provider      |

**Schedule 1**      Reviewable decisions

| <b>column 1<br/>item</b> | <b>column 2<br/>Act provision</b>   | <b>column 3<br/>reviewable decision</b>                  | <b>column 4<br/>person to be notified</b>                            |
|--------------------------|---|--|--|
| 16                       | 66 (1) (a)<br>(Amending, suspending or cancelling registration without application—higher education provider) | amending scope or conditions of registration             | registered higher education provider                                 |
| 17                       | 66 (1) (b)  | suspending registration or part of scope of registration | registered higher education provider                                 |
| 18                       | 66 (1) (c)  | cancelling registration                                  | registered higher education provider                                 |
| 19                       | 68 (2)<br>(Suspension of registration—higher education course previously agreed)                              | refusing to approve course                               | registered higher education provider and each provider of the course |
| 20                       | 69 (2)<br>(Cancellation of registration—higher education course previously agreed)                            | refusing to approve course                               | registered higher education provider and each provider of the course |

| <b>column 1<br/>item</b> | <b>column 2<br/>Act provision</b>   | <b>column 3<br/>reviewable decision</b>                                    | <b>column 4<br/>person to be notified</b>                           |
|--------------------------|---|--|---|
| 21                       | 73 (1)<br>(Decision about accreditation—higher education course)                    | refusing to accredit higher education course                               | applicant   |
| 22                       | 76 (2)<br>(Cancelling accreditation—higher education course)                        | cancelling accreditation of higher education course                        | registered higher education provider<br>each provider of the course |
| 23                       | 77 (2)<br>(Cancellation of accreditation—higher education course previously agreed) | refusing to approve course   | registered higher education provider<br>and each provider of course |
| 24                       | 88<br>(Declaration of ACT university)   | refusing to declare that a university is established or recognised         | proposed university   |
| 25                       | 93 (2) (a)<br>(Review of operations of university)                                  | amending declaration of establishment or recognition by imposing condition | university  |

**Schedule 1**      Reviewable decisions

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| <b>column 1<br/>item</b> | <b>column 2<br/>Act provision</b>                          | <b>column 3<br/>reviewable decision</b>  | <b>column 4<br/>person to be notified</b> |
|--------------------------|--|--|---|
| 26                       | 98 (2) (a)<br>(Review of operations of foreign university) | amending approval by imposing conditions | university                                |
| 27                       | 103 (2)<br>(Obstructing visits)                            | suspending or cancelling registration    | RTO or higher education provider          |

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- corporation
- exercise
- function
- may (see s 146)
- must (see s 146)
- person.

***accredited course*** means a course that—

- (a) leads to a qualification under the AQF; and
- (b) for a vocational education and training course—is registered as an accredited course under chapter 3; and
- (c) for a higher education course—is registered as an accredited course under chapter 4.

***accreditation*** includes renewed accreditation.

***ANTA*** means the Australian National Training Authority established under the Commonwealth Act.

***AQF*** means the policy framework entitled ‘Australian Qualifications Framework’ that defines all qualifications (whether as defined under this Act or otherwise) recognised nationally in education and training within Australia, endorsed by MINCO to commence on 1 January 1995, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

1           **AQTF** means the policy framework entitled ‘Australian Quality  
2           Training Framework’ that defines the criteria and standards for the  
3           registration of training organisations and the accreditation of courses  
4           in the vocational education and training sector endorsed by MINCO  
5           on 8 June 2001, as in force from time to time.

6           **Note 1**   The text of an applied, adopted or incorporated law or instrument,  
7                   whether applied as in force from time to time or at a particular time, is  
8                   taken to be a notifiable instrument if the operation of the Legislation  
9                   Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

10          **Note 2**   A notifiable instrument must be notified under the Legislation Act.

11          **authority** means the Vocational Education and Training Authority  
12          established under the *Vocational Education and Training Act 2003*.

13          **committee** means a committee established by the council under  
14          section 21.

15          **Commonwealth Act** means *the Australian National Training*  
16          *Authority Act 1992* (Cwth).

17          **compliance audit** means—

18           (a) for a RTO—an audit, including if necessary a site visit,  
19                   conducted by or for the council or another registering body to  
20                   establish whether the RTO complies with the RTO standards,  
21                   except any legislative compliance standard; or

22           (b) for a registered higher education provider—an audit, including  
23                   if necessary a site visit, conducted by or for the council to  
24                   establish whether the provider complies with the higher  
25                   education standards, except any legislative compliance  
26                   standard.

27          **corresponding law** means—

28           (a) for chapter 3 (Vocational education and training)—

29                   (i) if a regulation prescribes a law of another jurisdiction as  
30                   a corresponding law—that law; or



- 1 (ii) in any other case—a law of another jurisdiction that  
2 corresponds to chapter 3; and
- 3 (b) for a provision of chapter 3—the provision of a corresponding  
4 law of another jurisdiction under paragraph (a) that  
5 corresponds to the provision of chapter 3.
- 6 **council**—means the Accreditation and Registration Council  
7 established under section 7.
- 8 **course accrediting body** means the council or a body equivalent to  
9 the council in another jurisdiction responsible for the administration  
10 of the accreditation of courses under that jurisdiction’s legislation  
11 relating to vocational education and training or higher education.
- 12 **foreign university** means a university that is—
- 13 (a) established in a foreign country; and
- 14 (b) recognised as a university by the authority in the foreign  
15 country that, in the Minister’s opinion, is the competent  
16 authority for the purpose.
- 17 **franchise arrangement** means an agreement or other arrangement  
18 between 2 or more people by which one of them (the **franchisor**)  
19 authorises or permits another (the **franchisee**)—
- 20 (a) to engage in the business of offering, selling or distributing  
21 goods and services within or partly within the ACT, if the  
22 franchisee is required to do so—
- 23 (i) in accordance with a particular marketing, business or  
24 technical plan or system; and
- 25 (ii) under a common format or procedure (or format and  
26 procedure); and
- 27 (b) to use a mark or common trade name, in such a way that the  
28 business carried on by the franchisee is, or can be, identified by  
29 the public as being substantially associated with the mark or

1 name identifying, commonly connected with or controlled by  
2 the franchisor or a related person.

3 ***higher education award*** means—

4 (a) a degree, status, title or description of bachelor, master or  
5 doctor; or

6 (b) any other award that is described as a ‘degree’; or

7 (c) an award of graduate diploma or graduate certificate; or

8 (d) any other award described in AQF as a higher education award.

9 ***higher education course*** means a course of study that entitles a  
10 person who satisfies the course requirements to the conferral of a  
11 higher education award.

12 ***higher education provider*** means a provider of courses leading to  
13 higher education awards, other than a university.

14 ***higher education standards*** means the following, to the extent that  
15 they are relevant to higher education providers:

16 (a) the national protocols;

17 (b) the RTO standards and the standards for State and Territory  
18 registering and course accrediting bodies;

19 (c) any other standard for higher education that the Minister  
20 determines in writing for this paragraph.

21 ***jurisdiction*** means the Territory or, if it has enacted a corresponding  
22 law, a State.

1        ***legislative compliance standard*** means a standard included in the  
2        RTO standards or the higher education standards requiring that an  
3        RTO or higher education provider ensures that compliance with  
4        Commonwealth, State and Territory legislation and regulatory  
5        requirements relevant to its operations is integrated into its policies  
6        and procedures and that such compliance is maintained.

7        *Note*     On commencement of this definition, the relevant RTO standard was  
8        standard 2.

9        ***MINCO*** means the ministerial council on vocational education and  
10       training operating in accordance with the ANTA Agreement as  
11       defined in the Commonwealth Act, section 4 (1), definition of  
12       ***Agreement***.

13       ***ministerial council*** means a council consisting of the Ministers from  
14       the Territory, each State and the Commonwealth responsible for  
15       employment, education, training and youth affairs.

16       ***nationally endorsed***, for a training package, means endorsed by the  
17       committee known as the national training quality committee  
18       established by MINCO.

19       ***national protocols*** means the National Protocols for Higher  
20       Education Approval Processes endorsed by the ministerial council  
21       on education, employment, training and youth affairs on  
22       31 March 2000, as in force from time to time.

23       *Note 1*    The text of an applied, adopted or incorporated law or instrument,  
24       whether applied as in force from time to time or at a particular time, is  
25       taken to be a notifiable instrument if the operation of the Legislation  
26       Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

27       *Note 2*    A notifiable instrument must be notified under the Legislation Act.

28       ***national register*** means the National Training Information Service  
29       maintained by ANTA, to the extent that it consists of a register of  
30       people or matters registered under this Act or corresponding laws.

1            ***national training framework*** means the policy framework,  
2            comprising the AQTF and the concept of training packages,  
3            endorsed by MINCO in September 1996, and that policy framework  
4            and concept of training packages as in force from time to time.

5            *Note 1*    The text of an applied, adopted or incorporated law or instrument,  
6                            whether applied as in force from time to time or at a particular time, is  
7                            taken to be a notifiable instrument if the operation of the Legislation  
8                            Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

9            *Note 2*    A notifiable instrument must be notified under the Legislation Act.

10           ***prohibition*** means a prohibition on all or some of the operations of  
11           an RTO, higher education provider or university.

12           ***qualification*** means formal certification in the vocational education  
13           and training sector by an RTO and under the AQF that a person has  
14           achieved all the units of competencies or modules comprising  
15           learning outcomes stated for the qualification in—

16           (a) a nationally endorsed training package for which details of the  
17           qualification have been registered by ANTA; or

18           (b) an accredited course that provides training for the qualification.

19           ***registered*** means—

20           (a) for a training organisation—registered under chapter 3; and

21           (b) for a higher education provider—registered under chapter 4.

22           ***registered training organisation*** means a person whose details as a  
23           training organisation are registered.

24           ***registering body*** means the council or a body equivalent to the  
25           council in another jurisdiction that is responsible for the registration  
26           of training organisations under the corresponding law of that  
27           jurisdiction.

- 1        **registration** includes renewed registration.
- 2        **restriction** means a restriction on all or some of the operations of an  
3        RTO, higher education provider or university, or a prohibition.
- 4        **RTO** means a registered training organisation.
- 5        **RTO standards** means the standards for registered training  
6        organisations and, to the extent that they are relevant to an RTO, the  
7        standards for State and Territory registering and course accreditation  
8        bodies.
- 9        **scope of registration**—
- 10       (a) for an RTO—see section 31; or
- 11       (b) for a higher education provider—see section 58.
- 12       **standards for accreditation of courses** means the standards for  
13       accreditation of courses adopted on 8 June 2001 by MINCO under  
14       the AQTF, as in force from time to time.
- 15       *Note 1*    The text of an applied, adopted or incorporated law or instrument,  
16                whether applied as in force from time to time or at a particular time, is  
17                taken to be a notifiable instrument if the operation of the Legislation  
18                Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).
- 19       *Note 2*    A notifiable instrument must be notified under the Legislation Act.
- 20       **standards for registered training organisations** means the  
21       standards for registered training organisations adopted on  
22       8 June 2001 by MINCO under the AQTF, as in force from time to  
23       time.
- 24       *Note 1*    The text of an applied, adopted or incorporated law or instrument,  
25                whether applied as in force from time to time or at a particular time, is  
26                taken to be a notifiable instrument if the operation of the Legislation  
27                Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).
- 28       *Note 2*    A notifiable instrument must be notified under the Legislation Act.



- 1        **university** means—
- 2        (a) a provider of higher education that is—
- 3            (i) established or recognised as a university under this Act or
- 4            another law of the Territory, the Commonwealth or a
- 5            State; and
- 6            (ii) listed as a university on the AQF register; or
- 7        (b) a foreign university.
- 8        **university advisory panel**—see section 85 (Establishment of panel).
- 9        **vocational education and training** means the education and training
- 10        and qualifications and statements of attainment under the vocational
- 11        education and training provisions of the AQF.
- 12        **vocational education and training course** means a course leading to
- 13        a qualification or statement of attainment.